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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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APR 28 1993

In the Matter of)
Redevelopment of Spectrum to)
Encourage Innovation in the)
Use of New Telecommunications)
Technologies)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
ET Docket No. 92-9

To: The Commission

**REPLY COMMENTS
OF LOWER COLORADO RIVER AUTHORITY
TO OPPOSITIONS AND COMMENTS
ON PETITIONS FOR RECONSIDERATION AND CLARIFICATION**

The LOWER COLORADO RIVER AUTHORITY ("LCRA"), by its attorneys and pursuant to Public Notice released by the Federal Communications Commission ("FCC" or the "Commission"), hereby submits its replies to oppositions to petitions for reconsideration and clarification of the First Report and Order and Third Notice of Proposed Rule Making ("Order and Notice") in the above-referenced proceeding.¹ LCRA filed comments on the petitions on March 30, 1993.²

¹ First Report and Order and Third Notice of Proposed Rule Making, 7 FCC Rcd 6886 (1992).

² These replies are timely filed in accordance with the FCC's Public Notice in the Federal Register, 58 Fed. Reg. 13758 (March 15, 1993).

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**I. Parties Opposing "Expansion" of Government Exemption
Fail to Offer Justification for Limited Exemption.**

LCRA filed comments supporting the petitions of the
Utilities Telecommunications Council ("UTC") and American Public
Power Association ("APPA"), which urged the Commission to clarify
that all state and local government entities would be exempt from

from PCS.³ Nonetheless, their failure to offer any substantive support for distinguishing public safety licensees from other government licensees merely reflects the unsubstantiated nature of the Commission's action.

APC offers only the conclusory statement that not all state and local government facilities share the "special and unique concerns" of public safety licensees. APC at 2. Like the Commission, APC does not explain what these concerns are or how they justify an exemption.

Omnipoint speculates that, with respect to the economic considerations justifying the exemption, the Commission must have viewed public power systems, which "generate revenues by charging their customers for service," as more similar to private utilities than to government public safety agencies, which rely on "budgets derived from taxpayers." Omnipoint at 4. LCRA objects to Omnipoint's oversimplified description of how public power agencies are funded and asserts that, in fact, public power agencies are similar to other government licensees. LCRA, for example, is owned by the state of Texas and chartered by the state to manage the lower Colorado River. As an agency of the state, LCRA operates in accordance with government-imposed service obligations. Its board of directors are appointed by the governor. Most significantly, LCRA is a tax-exempt non-profit entity, in stark contrast to private utilities that operate to make a profit. Although LCRA generates revenue from the

³ "FCC Tentatively Awards Pioneer's Preferences to Three Applicants for New Personal Communications Services," News Release, GEN Docket No. 90-314 (October 8, 1992).

wholesale of electrical power, that is incidental to its main mission of managing the river, including controlling floods, managing water disbursement throughout the river basin and coordinating water supplies with cities and farmers. LCRA reinvests all revenues back into the company. In sum, LCRA's non-profit, government-owned status makes it much more comparable to all other government licensees than to private utilities.

Even if Omnipoint's distinctions were accurate or actually justified a limited exemption,⁴ there is no evidence demonstrating that the Commission considered such details when deciding the parameters of the state and local government exemption. Omnipoint's after-the-fact speculation about what the Commission might have thought does not satisfy the requirement that an agency provide a reasoned explanation, with a factual support in the record, for its policy choices. American Mining Congress v. EPA, 907 F.2d 1179 1187 (D.C. Cir. 1990).

Significantly, none of the PCS proponents refuted UTC's and APPA's specific evidence of Commission action supporting an exemption for all government licensees -- the FCC letter to Senator Cranston, the FCC's September 17, 1992, news release about its decision, and the legislative history of the Senate spectrum bill. The record simply contains no Commission assertions to the contrary to which the opponents of UTC's and

⁴ UTC pointed out that in many municipalities, the public utility holds the FCC license and operates the microwave network that is relied upon by public safety agencies. UTC at 12. Thus, not all public safety services would be protected by an exemption that does not include all state and local government licensees.

APPA's petitions can point. Without factual support, it is disingenuous to claim that the Commission meant anything other than what it stated -- that all state and local government licensees, including public power systems, would be exempt from involuntary relocation.

II. NATA's Comments Highlight Need for Further Notice on Relocation Plan for Unlicensed PCS Band.

The North American Telecommunications Association ("NATA") opposed exempting all government licensees from involuntary relocation because of the effect on deployment of service in the 1910-1930 MHz band, which the Commission has targeted for unlicensed PCS. NATA claims that permitting any microwave licensees to remain in this band will preclude deployment of unlicensed PCS. Thus, NATA recommends that no microwave licensees in the 1910-1930 MHz band be exempt from involuntary relocation. NATA at 4.

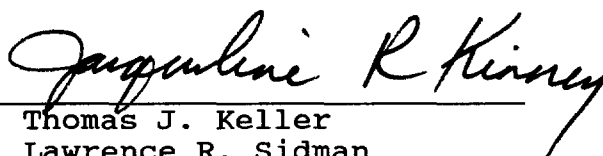
In its comments filed on January 13, 1993, in this proceeding, LCRA urged the Commission to issue a further notice to address the many unresolved issues about a transition plan for the band targeted for unlicensed PCS. NATA highlights once again the urgent need for such a further notice. It appears that the need for clear spectrum for unlicensed PCS will require special procedures to accommodate the state and local government facilities operating in the 1910-1930 MHz band. The Commission must develop a transition plan for these users and make it available for public comment.

III. Conclusion

Parties opposing UTC's and APPA's petitions have offered no substantive support for the view that only "public safety" government licensees should be exempt from involuntary relocation from the 2 GHz band. Accordingly, the Commission should clarify, as UTC and APPA requested, that all state and local government licensees, including public power systems, will be exempt.

Respectfully submitted,

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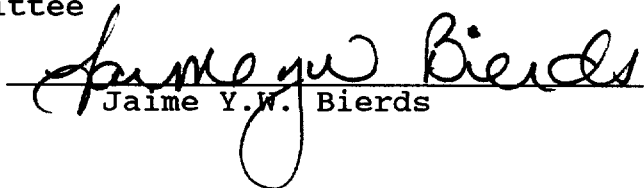
CERTIFICATE OF SERVICE

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